Access to social protection by immigrants, emigrants and resident nationals in the UK

Chapter 26
Access to Social Protection by Immigrants, Emigrants and Resident Nationals in the UK

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26.1 Overview of the Welfare System and Main Migration Features in the United Kingdom

The UK has a complex history of social protection rights in relation to immigrants. Gradually moving away from its colonial heritage, the UK over time imposed limitations on both immigration rights and access to its welfare system on its (former) British subjects, who no longer enjoy a privileged status compared to other immigrant groups. At the same time, the UK's membership of the EU, and particularly its participation in the Single Market, created a category of migrants from EEA countries who enjoy no immigration restrictions and have almost equal access to social protection to British citizens residing in the UK. The large influx of migrants from EEA countries in recent years prompted UK Governments to try to limit their access to social protection, as a mounting anti-immigration climate and especially a fear of overburdening the welfare system with 'benefit tourists', has become a dominant political issue. This culminated in the 2016 vote for the UK to leave the EU in an advisory referendum, with the UK officially leaving the EU (so-called Brexit) on 31 January 2020. After this date, the UK has entered a transition period under which the details of the future relation between the UK and EU are being negotiated. The transition period is set to end on 31 December 2020. The new legislative framework which will regulate access to social protection for EEA immigrants residing in the UK and British nationals residing in EEA countries is likely to bring conspicuous changes for these two categories. However, at present, it is difficult to gauge the

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entity of these changes as access to social protection constitutes among the most controversial issues over which the UK and the EU aim to find an agreement.

In this chapter, we demonstrate how, at present, access to social protection by immigrants is hierarchically structured depending on immigration status, residency status and benefit type. Most favoured under UK law and policy are resident British citizens and all immigrants with a permanent leave to remain, who enjoy full social protection rights. Next are EEA immigrants with a right to reside, who have the same rights as British citizens in most social protection fields. Nevertheless, the basis of the right to reside plays an important role, as only those in employment or their family members enjoy full social protection rights, whilst all others face limitations in many non-contributory benefits. Finally, non-EEA immigrants with a temporary leave are generally excluded from all non-contributory benefits, but they are usually entitled to contributory ones. As regards British citizens who have emigrated, they generally have access to contributory benefits, but face several limitations as regards non-contributory ones, with easier access for those living in EEA countries or in countries with which the UK has a social security agreement.

26.1.1 Main Characteristics of the National Social Security System

The UK social protection system is rather residual in European comparative perspective, reflecting an emphasis as in other 'liberal' welfare states on market over non-market relations (Dukelow and Heins 2018). The financing of social security rests to a more limited extent than in most other European countries on specific payroll contributions, which account for only 35% of receipts in 2015 compared to a European average of over 50% and more than 60% in both France and Germany. The lion's share of social protection funding in the UK comes from general government sources, which in 2015 represented more than 50% of receipts.[1]

The UK social security system – the system of cash transfers – is still highly centralised in its governance, with most expenditure in this area administered by the Department for Work and Pensions (DWP) or Her Majesty's Revenue and Customs (HMRC). For reasons linked to its special status, Northern Ireland has its own cash transfer legislation and associated administrative bodies – though legislation has traditionally followed and matched that in Great Britain. Another qualification is that some powers over a number of social security benefits were devolved to the Scottish Government under the 2016 Scotland Act (Simpson et al. 2019). The main working-age social security benefits, family benefits and the state retirement pension remain, however, reserved to the Westminster Government. The provision of health and social care services has been rather more affected by the recent

[1] Eurostat (2019) 'Social protection receipts by type', https://ec.europa.eu/eurostat/tgm/table.do?tab= table&init=1&language=en&pcode=tps00108&plugin=1. Accessed 10 April 2019.

devolution of powers to the UK's constituent nations, as since 1999 the devolved Governments in Belfast, Cardiff and Edinburgh have had power over the organisation of both health provision and local government social services.

The UK social security system is characterised by four main types of cash benefit (Millar and Sainsbury 2018: 3–4). First are universal or *demogrant* benefits, paid at standard rates to all individuals who fall into a specific category, irrespective of their work/contribution record or their household income. Child benefit was until recently the main example, but since 2013, high-earners are no longer eligible; specific disability and carer benefits to cover exceptional costs (Disability Living Allowance; Personal Independence Payment; Attendance Allowance) also fall into this category. Secondly, contributory benefits, entitlement to which is based on an individual's contribution history derived mainly from their employment biography, cover individuals against interruption of earnings for reasons of retirement, unemployment, sickness/disability and widowhood. Unlike in many other developed countries, contributory benefits (also called 'national insurance' benefits) in the UK are paid at a flat-rate, without any reference to an individual's prior earnings. Means-tested benefits (also called 'income based' or 'income related'), thirdly, are paid to a variety of households with low incomes based on the circumstances of the adult members and the number of children living in the household. Tax credits, finally, are an administratively specific form of means-tested benefit that have become an important feature of the UK social security landscape since the late 1990s. Tax credits are paid to lower-income working households (Working Tax Credit) and lower-income working or non-working households with children (Child Tax Credit).

In-kind benefits, or services, are the other major component of the social protection system. This is a particularly significant type of social protection in the area of health in the UK, which has a National Health Service (NHS) to provide ambulatory and hospital care. With some overlap with the NHS, services in the area of social care and social work are provided by local governments.

At time of writing, the UK social security system is in a transitional phase that results from the gradual implementation of the main provisions of the 2012 Welfare Reform Act. The most significant of these is the introduction of a new general means-tested benefit called Universal Credit (UC), which will eventually replace existing categorical means-tested benefits for the unemployed, the disabled and lone parents as well as means-tested housing benefits and tax credits. UC is being introduced initially only for new claimants, and only for all new claimants in certain parts of the country (so-called 'full service areas'). In some other parts (so-called 'gateway areas'), only new claimants meeting gateway conditions – for example, being single and not having children, but also being a British citizen – can claim UC, while others can continue to claim pre-existing 'legacy benefits'. The latest estimate for the date at which all current claimants of legacy benefits will be transferred on to UC is 2022.

26.1.2 Migration History and Key Policy Developments

In line with other former colonial countries, the UK has a long history of immigration. For a great part of the second half of the twentieth century, the largest share of immigrants came from Commonwealth countries and Ireland (Hansen 2000). The British Nationality Act 1948 granted the status of Citizen of the United Kingdom and Colonies (CUKS) to all individuals born or naturalised in either the UK or one of its colonies, thus allowing individuals from the colonies who moved to the UK to be considered like any other British citizen in most rights (Spencer 1997).

Nevertheless, the growing immigration flows from the 1950s onwards prompted successive Governments to gradually tighten immigration laws and restrict the social rights of immigrants. In the 1960s, controls were first introduced and then tightened on all immigrants not born in the UK or not holding a passport issued by the British Government. In 1971, the 'right of abode' was created, granting full social protection rights only to those CUKSs born in the UK, born, adopted or married to a British citizen and those who had settled in the UK for at least 5 years. In 1981, the CUKS status was substituted by different citizenship statuses for British citizens and from those from Overseas or Dependent Territories, granting the 'right of abode' only to the former (Spencer 1997).

The 1990s constituted a turning point for immigration in the UK. On the one hand, the scrapping of the Primary Purpose rule (1997) relaxed regulations preventing spouses married to British citizens from settling in the UK (Wray 2006). Together with an improved economic situation, this contributed to drawing an increased number of migrants to the country, more than doubling net migration within a few years (Vargas-Silva and Fernández-Reino 2018). On the other hand, the deepening of the European Single Market largely abolished immigration restrictions on EEA nationals, allowing free movement of people in and out of the UK. To regulate access to the welfare system among this group of migrants within the parameters allowed by EU law, the 'habitual residence' test was introduced and access to non-contributory benefits for EEA immigrants was granted only to those who could prove to be 'habitually resident' in the UK (Kennedy 2011a). This test also applies to British citizens who have been living abroad, as access to most non-contributory benefits is conditional on being habitually resident in the UK, though British citizens living in the EEA or in non-EEA countries with which UK has social security agreements can still claim some non-contributory benefits.

Immigration from EEA countries remained relatively low until 2004, when the EU enlargement brought a high number of Eastern Europeans, especially Polish, to the UK. The UK was one of the few EU countries not to introduce transitional immigration restrictions on citizens of the acceding member states, only introducing some limitations on social protection access through the Worker Registration Scheme, which allowed Eastern European (so called 'A8') immigrants with a contract of employment to access a range of non-contributory benefits only after 12 months of residence (McCollum 2012; Dustmann and Frattini 2014). In the same year, legislation was amended to grant access to non-contributory benefits only to

EEA immigrants with a 'right to reside' (Kennedy 2011b, 2015a). In 2007, following the unexpected inflow of EEA immigrants which had doubled net migration since 2004, the Government introduced strict immigration rules for citizens of Romania and Bulgaria (so-called 'A2') and temporary restrictions in both work and social protection rights (Shutes 2016).

The Coalition Government that came to power in 2010 adopted a much tougher stance on immigration and access to social protection rights than its predecessor, as the increased flux of migrants in previous years pushed immigration to the top of the political agenda, together with an increasingly dominant political and media discourse on 'benefit tourism' (Carmel and Sojka 2018). With respect to non-EEA nationals subject to immigration control, the Welfare Reform Act 2012 introduced the possibility to restrict access to contributory benefits to those with a right to work in the UK, though at time of writing, this provision has not been followed up by implementing regulations (Child Poverty Action Group 2017: 67); and the Immigration Act 2014 introduced an 'immigration health surcharge' payable at the time of the visa application as a condition of free access to most NHS services (Powell and Bate 2017).

Over the same period, the Eurozone crisis helped to change patterns of EEA migration to the UK, as Southern Europe became an important source of immigration. Further, the end of the transitional restrictions to A2 nationals in January 2014 rapidly brought Romania to overtake Poland as the main country of origin of new migrants. The end of restrictions for Bulgarians and Romanians also brought a raft of policy changes to address what then Prime Minister David Cameron described as "the magnetic pull of Britain's benefit system" (cited in Kennedy 2015a: 19). These included the introduction of a more rigorous 'habitual residence test' and several restrictions in accessing non-contributory benefits.

Immigration and migrants' access to social protection were core political issues during the EU membership referendum campaign, and popular opposition to immigration is often argued to be a key factor in explaining the referendum results (Clarke et al. 2017; Blinder and Richards 2018). After the 2016 vote, the inflow of EEA immigrants has waned, whilst immigration from non-EEA countries has stayed in line with previous years (Vargas-Silva and Fernández-Reino 2018).

26.2 Migration and Social Protection in the United Kingdom

The conditions that regulate access to social security benefits can be thought of as pertaining to three different levels of conditionality (see Clasen and Clegg 2007): conditions of category, conditions of circumstance, and conditions of conduct. While conditions of circumstance (e.g. contribution requirements, means-tests), and conditions of conduct (e.g. work or training requirements for claimants), are the main focus of comparative social security analysis, the boundaries of the risk groups that social benefits and services are designed to help are themselves social constructs, formed by manipulation of conditions of category. While these conditions

are of various types (demographic for age-related benefits, diagnostic for health services or disability benefits, etc.), a number also relate to the legal and/or physical attachment of claimants to the national territory. Conditions of 'ordinary residence' or 'habitual residence' are part of this first level of conditionality, and for UK nationals apply to all means-tested benefits and tax credits as well as to child benefit (except where a bilateral agreement covering this benefit is in place), though not to contributory benefits (Child Poverty Action Group 2018: 1549–1555). Under the UK's 'habitual residence'[2] rules, for example, a claimant must be able to prove that at the time of the claim they have a settled intention to reside in the UK (in fact, the common travel area)[3] and, for unemployment assistance alone, that they have been living in the common travel area for the past 3 months.

EEA nationals coming to the UK to seek work also have to pass the habitual residence test, which has been made more rigorous due to concerns about 'benefit tourism' by this group (Carmel and Sojka 2018). But many EEA nationals do not need to prove habitual residence in the UK to claim benefits, as long as they have a 'right to reside' as workers or self-employed persons (or their family members), for which they need to show that they are in 'genuine and effective work'. The status of worker or self-employed, and with it the right to reside and claim benefits, can also be retained after the (self-)employment ends for up to 6 months, though longer than that only if a 'genuine prospect of work' (GPoW) can be demonstrated. In this way, we see domestic policy using conditions of conduct to make limitations on access to benefits that they can no longer pursue through conditions of category due to EU law (see also Shutes 2016). After Brexit, it is likely that only EEA with settled status[4] will continue to enjoy the same rights as before. Non-EEA nationals who are subject to immigration control are excluded by the terms of their visas from accessing those UK benefits that fall under the definition, in immigration law, of 'public funds'. This concept covers all means-tested benefits and tax credits as well as the universal child benefit and disability/carer's benefits. The rights of non-EEA migrants to social protection in the UK are essentially limited to contributory benefits and health services. It is still uncertain whether EEA immigrants without settled status will be treated as non-EEA immigrants for social protection purposes at the end of the transition period following Brexit.

Benefits requiring habitual or ordinary residence generally cannot be exported overseas, and benefits that don't – such as contributory benefits – may also have

[2] The term 'habitually resident' is not defined in legislation, but there is now quite a substantial body of case law on what it means. Factors may include the length and continuity of residence, the person's future intentions, reasons for migration or where the person's 'centre of interest' lies (Kennedy 2015b).

[3] The common travel area (CTA) is an open borders arrangement between the UK, Ireland, the Isle of Man and the Channel Islands. For the purposes of immigration policy and control, residence in any part of the CTA counts as residence in another.

[4] At present, EEA immigrants who have been living in the UK for a continuous 5-year period can apply for settled status. Those who have immigrated to the UK before 31 December 2020 can apply to pre-settled status.

presence requirements that end entitlement in all but temporary periods of absence from the common travel area. For some benefits, EU law on the coordination of social security relaxes these rules for UK nationals moving to EEA countries for as long as the UK remains the 'competent state'. It is not very clear what will happen at the end of the transition period. Reciprocal agreements relax them for UK nationals moving to non-EEA countries with which the UK has signed an agreement, but these are few in number, highly variable in their coverage and always exclude means-tested benefits.

26.2.1 Unemployment

The UK unemployment benefit system currently combines an insurance benefit (contribution-based Jobseekers Allowance, JSA-C), which is flat-rate and paid for a maximum of 6 months on the basis of contribution record, and a means-tested benefit (income-based Jobseekers Allowance, JSA-IB), which is paid at a rate dependent on income and family composition.

To be entitled to JSA-C, a UK national must have paid national insurance contributions (NICs) for 26 weeks in the two tax years preceding the claim; and contributions paid or credited must amount in both the tax years to 50 times the minimum weekly contribution for that year. There is no requirement of prior residence. The benefit has a presence requirement, though temporary periods of absence from the common travel area are permissible in specified situations, e.g. 7 days to attend a job interview. Entitlement to JSA-IB depends on a household means test and having been habitually resident in the common travel area in the 3 months preceding the claim. The presence requirements are the same for JSA-IB as those that apply to JSA-C.

To receive either form of JSA, it is necessary to be registered unemployed, immediately available for work and actively seeking work. Claimants must sign a 'jobseeker's agreement stating patterns of availability, the type of employment being sought and steps being taken to find work. Failure to respect the terms of the jobseeker's agreement may result in the suspension or reduction of benefit entitlement for set periods.

EEA nationals and non-EEA nationals subject to immigration control can claim JSA-C on the same terms as UK nationals. Only EEA nationals can claim JSA-IB, which they can do either as a 'jobseeker' or as a 'retained worker' if they meet the standard eligibility conditions. If the claim is made as a jobseeker, there is no longer any entitlement to benefits which are 'passported' for UK nationals claiming JSA-IB, notably housing benefit. If the claim is made as a 'retained worker', housing benefit can additionally be claimed, but for those who have worked for less than 12 months in the UK before the claim 'retained worker' status can be retained for a maximum of 6 months. If an EEA national has a right to reside only as a jobseeker, they can claim JSA-IB for a maximum of 19 weeks.

Under EU social security coordination rules, JSA-C can be exported to another EEA country for a maximum of 3 months. Reciprocal arrangements with seven non-EEA states (Canada, New Zealand, Bosnia, Kosovo, Macedonia, Montenegro, Serbia) as well as Guernsey and the Isle of Man include JSA-C within their scope. JSA-IB is not exportable.

26.2.2 Health Care

Since 1948, health care in the United Kingdom has been provided through the National Health Service. Following devolution in 1999, health care services in the four countries of the UK are operated autonomously and respond to the relevant Government: the UK Government (NHS England), Scottish Government (NHS Scotland), Welsh Government (NHS Wales), Northern Ireland Executive (Health and Social Care in Northern Ireland).

The founding principles of the health care system are to be universal, comprehensive and free at the point of use, with funding coming mostly from general taxation. The system provides a wide range of health care services which are generally free at the point of delivery. Since 1999, different regional NHS have increasingly diverged in terms of policy and management, though the same basic principles can be said to still hold (Greer 2016).

Everyone who is ordinarily resident in the UK has access to free health care (with exemptions). Nationals, non-EEA immigrants with an indefinite right to remain and EEA immigrants have the same access to health care, though the latter should be formally eligible only by presenting the European Health Insurance Card. Nevertheless, this is not enforced in practice. Non-EEA immigrants coming for a stay of more than 6 months are required to pay an immigration health surcharge at the time of the visa application. Non-EEA immigrants coming for a stay of less than 6 months have to pay to access health care.

Sickness benefits in cash are provided only to employees who have paid NICs. Access does not depend on immigration status. To qualify for sickness benefits, claimants need to have been off sick for four or more days in a row and earn at least an average of £116 per week. There is no minimum period of employment to qualify. Statutory sick pay (SSP) is provided on a flat-rate basis, for up to 28 weeks. Receipt of SSP can continue while a claimant is living abroad if they work for a UK employer in the EEA, or in any other country if their employer pays UKNICs.

Invalidity benefits in the UK are in constant evolution. The former incapacity benefit (IB) has gradually been replaced by the Employment and Support Allowance (ESA), which can be contribution-based (ESA-C) or income-based (ESA-IB), though a few claimants still receive the former incapacity benefit. At the same time, Universal Credit (UC) is gradually substituting ESA-IB.

In order to receive either ESA-C or ESA-IB, the claimant has to provide a medical certificate stating that they are not fit for work and pass a Work Capability Assessment to see whether she is actually unfit for work and whether she qualifies

to receive ESA long-term. The assessment is also meant to place the claimant in either a work-related activity group or in a support group.

In order to qualify for ESA-C, it is necessary to have paid enough NICs, which means having worked for at least 26 weeks in the two complete tax years before the claim and having paid contributions to the value of at least 50 times the lower earnings threshold in both tax years. In the work-related activity group, the maximum duration of payment is 12 months, while it is unlimited in the support group. As immigration status is not a qualifying condition, nationals, EEA-migrants and non-EEA migrants can all access ESA-C. In order to keep receiving ESA-C, the claimant can go outside the UK for a maximum of 4 weeks (or 26 weeks for medical treatment). ESA-C can however be exported to an EEA country for up to 1 year.

Access to ESA-IB depends on a household means-test and all claimants must satisfy the condition of habitual residence. As ESA-IB falls under the definition of 'public funds', non-EEA migrants without an indefinite leave to remain cannot claim this benefit. Those who receive ESA-IB can go abroad for a maximum of 4 weeks (or 26 weeks if it is for medical treatment).

26.2.3 Pensions

The UK pension system is organised in a three-pillar structure. The first pillar is constituted by the Basic State Pension (BSP), which is a contribution-based benefit providing flat-rate protection for wage earners. The second pillar is the State Second Pension (S2P) or Additional State Pension. The S2P is meant to top up the BSP with an earnings-related component, providing additional public pension income in retirement, though workers can choose to contract out of the scheme by joining an occupational scheme provided by their employer. Following the Pensions Act 2014, from April 2016 the two state components have merged into one flat-rate state pension, named New State Pension (NSP), which will substitute for both BSP and S2P for men born after 6 April 1951 and women born after 6 April 1953.

In order to be entitled to the BSP, the S2P or the NSP, it is necessary to be of pension age (65 years old) and have paid NICs. Both the BSP and the NSP are provided on a flat-rate. There are no residence or immigration status requirements to receive those pensions. Nationals, EEA migrants and non-EEA migrants can access either BSP or NSP, as long as they have paid enough contributions. There is no limitation on where the person can live while receiving the benefit.

The main means-tested benefit for those of pension age is the Pension Credit (PC). It is meant to supplement the BSP or the NSP for those on low income and is calculated on the basis of a household means test. The PC has two components: the Guarantee Credit (GC) and the Savings Credit (SC). The GC tops up pension incomes below £163 per week per individual (or £248.80 per couple) in order to reach either threshold. SC is an extra credit for those who have saved some money towards their retirement. People who retired after 6 April 2016 are no longer eligible for SC.

In order to receive PC, claimants, including nationals returning to the UK and EEA immigrants, have to pass the habitual residence test. As PC falls under the definition of 'public funds', all non-EEA immigrants without an indefinite leave to remain cannot access PC. In order to keep receiving the benefit, the person has to reside in the UK and they can leave the country only for up to 4 weeks without explanation, 8 weeks for deaths of a partner or child, 26 weeks if for medical treatment.

26.2.4 Family Benefits

The UK social security system features maternity pay, paternity pay and shared parental pay. The main parental benefit is statutory maternity pay (SMP). To receive the benefit, the mother has to be an employee and have worked for the same employer for at least 26 weeks continuing into the 'qualifying week', namely the 15th week before the expected week of childbirth. Furthermore, she has to have earned at least £116 pounds per week on average. SMP is paid for up to 39 weeks. There are no immigration status requirements to receive SMP, meaning that all migrants can access it. If the mother lives abroad, she can receive SMP if she works for a UK employer in the EEA or if her employer continues paying UKNICs.

If a mother does not qualify to SMP, she may be eligible for Maternity Allowance (MA). To access MA, the mother has to be either employed or self-employed, or have recently stopped working, and she has to have been either employed or self-employed for at least 26 weeks and have earned at least £30 per week for 13 weeks in the 66 weeks before the expected date of child's birth. The benefit can be paid up to 39 weeks. All migrants can access MA if they meet the other requirements. If the mother lives in the EEA or in a country with which the UK has an agreement, she can continue to receive MA. To access paternity pay, the requirements are very similar to those of SMP. There are again no residency or immigration status requirements. Parents can also opt for shared parental pay (SPP). The eligibility criteria and the amount received are the same as for SMP.

Child benefit (CB) has traditionally been the only truly universal welfare benefit in the UK welfare system. Until recently, every household responsible for a child below 16 years old (or under 20, if they stay in approved education or training) was entitled to CB. Since 2013, however, the universality of the benefit has been undermined through the introduction of a high-income tax charge for individuals earning more than £50,000 per year, which reaches 100% of the CB for incomes above £60,000. This has made CB *de facto* means-tested on individual (not household) income. To receive CB, all nationals returning to the UK and EEA migrants need to pass the habitual residence test. Non-EEA migrants without an indefinite leave to remain cannot claim CB. A person can still receive the benefit if they leave the UK for a short period of time (up to 12 weeks). For a longer period, receipt of CB can only continue if the claimant continues to pay UK NICs (or receive a UK

contribution-based benefit) and resides in an EEA country or in a country with which the UK has an agreement.

26.2.5 Guaranteed Minimum Resources

From the abolition of Supplementary Benefit in the late 1980s until recently, the UK did not have a general scheme of guaranteed minimum resources but instead a highly complex 'last safety net' composed of multiple categorical means-tested benefits. The introduction of Universal Credit (UC) with the 2012 Welfare Reform Act however recreates such a general system, at least for people of working age. UC is being implemented progressively, and currently co-exists with the categorical benefits it will eventually replace. UC is a centralised benefit, administered by the Department for Work and Pensions.[5]

UC is a household entitlement, and eligibility is based on the income and assets of a household falling below a specified level. It is reassessed on a monthly basis and the benefit amount is variable depending on the income and assets of the household. Claimants of UC must sign a 'claimant commitment' which specifies their work-related requirements. The 'default' position is that all claimants will have full work-related requirements, with the need to demonstrate work search and work availability. Exceptions exist, for example, when people care for very young children or have work-limiting disabilities.[6] Failure to comply with work-related requirements or other elements of the claimant commitment can result in the claimant being sanctioned.[7]

Claimants of UC must meet the habitual residence requirement, which since 2004 requires prior evidence of a right to reside. EEA migrants who are in the UK exercising their 3 month 'initial right of residence' under the European Directive 2004/38/EC are not considered to have a right to reside, and so cannot claim UC. Being granted a right to reside as an 'EEA jobseeker' only satisfies the right to reside requirement for JSA-IB, but it does not satisfy it for UC. This means that an EEA jobseeker living in an area that has yet to introduce UC may be able to claim benefits, whereas one living in a full service UC area will not. As UC falls within the definition of public funds under immigration law, it cannot be claimed by non-EEA citizens in the UK and subject to immigration control. UC cannot be exported

[5] Though UC is a reserved benefit, the Scotland Act 2016 gave the Scottish Government some limited powers to vary its administration in Scotland.

[6] Under the initial regulations, EEA citizens able to claim UC were necessarily considered to be in the default position, irrespective of their ability to actually (seek) work. This discriminatory anomaly was rectified in 2015 by the Universal Credit (EEA jobseekers) amendment regulations 20015 (SI 2015/546).

[7] House of Commons Work and Pensions Select Committee (2018). Benefit Sanctions, 19th Report of Session 2017–2019, HC 955. https://publications.parliament.uk/pa/cm201719/cmselect/cmworpen/ 955/955.pdf. Accessed 19 Feb 2018.

to EEA countries and is not covered by any agreements with non-EEA states. UC claims can continue during temporary absences from the UK of up to 1 month (or longer in case of death of a close relative or medical treatment) (Child Poverty Action Group 2018: 1623).

26.3 Conclusions

The social protection rights of migrants in the UK have greatly evolved in the past few decades. On the one hand, there has been a gradual restriction of these rights for immigrants coming from colonies or former colonies, whilst EU law has granted access to most social protection rights for EEA migrants. Nevertheless, a growing anti-immigration sentiment, which has seen immigration and immigrants' rights to social protection becoming core political issues in the past decade, have prompted successive Governments to restrict social protection rights for both EEA and non-EEA immigrants, and this is currently one of the most controversial issues in the negotiations between the UK and the EU in the transition period after Brexit.

In this chapter, we have shown that, at present, there is a hierarchy of access to the UK social protection system according to the interplay of three main variables: immigration status, residency status and benefit type. Those with 'the right of abode', which includes all full British citizens who are habitually resident in the UK, enjoy the broadest access. Those with a right to reside as EEA nationals (or family members thereof) enjoy many of the same rights of access to benefits as UK citizens, though for demogrants, means-tested benefits and tax credits, the precise basis of an EEA national's right to reside plays an important role. People who are (retained) workers or self-employed (or family members thereof) can access these benefits on the same grounds as UK citizens, whereas those with only an initial right of residence or whose right to reside is as an EEA jobseeker face more limitations. This situation is likely to undergo significant changes at the end of the transition period following Brexit but, at the time of publication, the new regulatory framework is still being negotiated. For non-EEA nationals, only those granted a permanent leave to remain can (normally) access the full range of social benefits and services. Those with time-limited leaves, and subject to immigration control, can claim contributory benefits if they are entitled and access health services, but are unable as a condition of their visa to access 'public funds' as defined in immigration law, which in practice covers all demogrants, means-tested benefits and tax credits. As such, contributory benefits and health services are the most accessible benefits; demogrants, means-tested benefits and tax credits are far less so. As regards British citizens living abroad, they are entitled to most contributory benefits (albeit some for a limited period of time), whilst they face restrictions in accessing means-tested benefits, demogrants and tax credits, though they can still claim child benefits and maternity allowance if living in a EEA country.

The distinction between types of benefits is important for access to benefits via reciprocal agreements too. The UK has signed 20 such agreements with non-EU

states, all of which cover pensions, most of which cover family and sickness benefits and some of which cover unemployment benefits. In all cases, however, the agreements pertain to non-means tested benefits, either contributory or universal.

Concerns about the access of migrants to the UK social security system has been a central issue in UK political debates in recent years, and fed into the most significant political event in contemporary British history: the holding of an in-out referendum on the UK's membership of the European Union, and subsequent popular vote for 'Brexit'. Limiting access of EEA nationals to UK benefits, specifically in-work tax credits and social housing, and ending the possibility for EEA nationals resident in the UK to receive child benefits when their children lived in another Member State were key demands in the UK Government's ultimately ill-fated attempt to renegotiate the terms of its EU membership ahead of the 2016 referendum (Clegg 2016). Though the renegotiation and referendum were prompted by extreme tensions over EU membership within the governing Conservative Party (Clegg 2017), the ambition of making access to the UK benefit system more restrictive to migrants in fact enjoys cross-party support (Kennedy 2015c). The future of UK immigration policy is currently suspended on the outcome of the fraught and drawn-out attempts of the Government to negotiate the details of its future relationship with the EU, and the outcome of negotiations is still highly uncertain.

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